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IN THE
COURT OF APPEALS OF INDIANA

AURELIO CASTILLO,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0610-CR-949
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Rubick, Commissioner
Cause No. 49G04-0605-FA-90416

May 16, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Aurelio Castillo (Castillo), appeals his six year sentence for battery, a Class D felony, Ind. Code § 35-42-2-1, and domestic battery, a Class D felony, I.C. § 35-42-2-1.3.

We reverse and remand with instructions.

ISSUE

Castillo raises one issue on appeal, which we restate as follows: Whether the trial court properly sentenced Castillo.

FACTS AND PROCEDURAL HISTORY

Castillo lived in Indianapolis with his girlfriend, Guillermina Pena (Pena), and their five-year-old son, I.C. On May 18, 2006, Castillo struck I.C. multiple times with a belt, causing redness, swelling, and pain. Castillo also struck Pena with the belt causing injury.

On May 23, 2006, the State filed an Information charging Castillo with Count I, child molest, a Class A felony, I.C. § 35-42-4-3; Count II, criminal deviate conduct, a Class B felony, I.C. § 35-42-4-2; Count III, criminal confinement, a Class D felony, I.C. § 35-42-3-3; Count IV, criminal confinement, a Class D felony, I.C. § 35-42-3-3; Count V, battery on a child (causing injury), a Class D felony, I.C. § 35-42-2-1; Count VI, battery, a Class A misdemeanor, I.C. § 35-42-2-1; Count VII, Part I, domestic battery, a Class A misdemeanor, I.C. § 35-42-2-1.3; and Count VII, Part II, domestic battery, a Class D felony, I.C. § 35-42-2-1.3. On November 20, 2006, a plea agreement was entered into and Castillo agreed to plead guilty to Counts V and Part II of Count VII,

battery and domestic battery, Class D felonies. In return, the State agreed to dismiss the rest of the charges. Sentencing was left to the trial court's discretion. On September 27, 2006, the trial court sentenced Castillo to three years on each conviction with sentences to run consecutively.

Castillo now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Castillo contends that he was improperly sentenced to two consecutive three year sentences. Specifically, Castillo argues that the time, place, and type and method of the offenses constitute a single episode of criminal conduct, thus precluding his sentence from exceeding four years. The State concedes.

I.C. § 35-50-1-2(c) states:

> Except as provided in subsection (d) or (e), the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the:
>
> (1) aggravating circumstances in [I.C. §] 35-38-1-7.1(a); and
>
> (2) mitigating circumstances in [I.C. §] 35-38-1-7.1(b);
>
> in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under [I.C. §] 35-50-2-8 and [I.C. §] 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

Crimes of violence are codified under I.C. § 35-50-1-2(a) and do not include battery or domestic battery. *See* I.C. § 35-50-1-2(a).

An episode of criminal conduct means "offenses or a connected series of offenses that are closely related in time, place, and circumstance." I.C. § 35-50-1-2(b). More specifically, a single episode of criminal conduct should be based "on whether the alleged conduct was so closely related in time, place and circumstances that a complete account of one charge cannot be related without referring to details of the other charge." *Tedlock v. State*, 656 N.E.2d 273, 276 (Ind. Ct. App. 1995) (quoting *State v. Ferraro*, 800 P.2d 623, 629 (Haw. Ct. App. 1990)).

In the instant case, both offenses presumably took place close in time, at the same place, and surrounding the same set of circumstances. *See Ballard v. State*, 715 N.E.2d 1276 (Ind. Ct. App. 1999) (defendant was convicted of two counts of battery, one count against each victim, and were held to be a single episode of criminal conduct due to being perfected close in time and place). Our review of the record does not reveal a detailed accounting of the facts. Rather, the factual basis consists merely of the State reciting the charging information and portions of the probable cause affidavit.[1] However, we know, at least, the offenses were committed on the same day – May 18, 2006 – in the same place – the 1100 block of Shadowview Way East Drive, Indianapolis – and in the same manner – with a belt. Thus, we find, and the State concedes, these offenses constitute a single episode of criminal conduct pursuant to I.C. § 35-50-1-2. As such, the six year sentence imposed by the trial court is impermissible. The maximum consecutive sentence Castillo may receive is four years, the advisory sentence for a Class C felony,

[1] We remind the State that merely reciting the charging information or probable cause affidavit at a guilty plea hearing may not create a sufficient factual basis for appellate review. We encourage the State to take more care in creating a factual basis at guilty plea hearings.

the class of felony one higher than the most serious felony for which Castillo was convicted – a Class D felony.

CONCLUSION

Based on the foregoing, we find the trial court's sentence of six years is improper.

Reversed and remanded with instructions to impose a sentence that does not exceed the advisory term of a Class C felony: 4 years.

NAJAM, J., and BARNES, J., concur.